

Step-parents—overview



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- Geraldine Morris, Solicitor, Head of LexisPSL Family

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Step-parents—overview

Acquisition of parental responsibility by step-parents

Under the Children Act 1989 (ChA 1989), where a child’s parent who has parental responsibility is married to, or is the civil partner of, a person who is not the child’s parent:

- > both parents with parental responsibility may enter into a parental responsibility agreement with the step-parent
- > on the application of the step-parent the court may order that the step-parent have parental responsibility

Additionally, step-parents may also acquire parental responsibility by:

- > obtaining a child arrangements order (CAO) in which they are named as a person with whom the child is to live—they have parental responsibility while the order remains in force so far as providing for the child to live with that person

- > obtaining a CAO in which they are named as a person with whom the child is to spend time or otherwise have contact but they are not named as the person with whom the child is to live—in those circumstances the court may provide in the order for the person to have parental responsibility for the child while the provisions in the order continue to be met in that person’s case
- > becoming the child’s guardian
- > being appointed as a special guardian

See Practice Note: *Acquisition of parental responsibility by step-parents and others.*

Meaning and scope of parental responsibility

Parental responsibility is defined in ChA 1989, s 3(1) as all the rights, duties, powers and responsibilities and authority that, by law, a parent of a child has in relation to the child and their property.

Parental responsibility includes, but is not limited to issues such as:

- > consenting to medical treatment or obtain appropriate treatment for the child
- > consenting to the child’s marriage
- > naming the child
- > removing the child from the jurisdiction

See Practice Note: *The meaning and scope of parental responsibility.*

Procedure—parental responsibility applications

Attendance at a family mediation information and assessment meeting (MIAM) is compulsory before issuing an application for parental responsibility, unless a MIAM exemption or mediator’s exemption applies. An applicant for a parental responsibility order must complete Form FM1 and submit it with the application.

See Practice Note: *Non-court dispute resolution—mediation information and assessment meetings (MIAMs).*

The rules in respect of private law proceedings relating to children are largely contained in the Family Procedure Rules 2010 (FPR 2010), SI 2010/2955, Pt 12 and the corresponding FPR 2010, PD 12B, called the Child Arrangements Programme (CAP), which sets out the procedure that applies where a dispute has arisen between separated parents and/or families about arrangements concerning children.

See Practice Note: *Procedure—parental responsibility applications.*

Adoption by step-parents

Under section 51(2) of the Adoption and Children Act 2002 (ACA 2002) a step-parent may apply to adopt their step-child.

Generally, when an adoption order is made it will give parental responsibility to the adopter and extinguish the parental responsibility that any person other than the adopter had for the adopted child immediately before the making of the order. However, in the case of an order made on an application under ACA 2002, s 51(2) by the partner of a parent of the adopted child (a step-parent), an adoption order does not affect the parental responsibility of that parent or any of their duties within ACA 2002, s 46(2)(d).

A step-parent adoption will only be granted if the court is satisfied that:

- > each parent or guardian consents to the making of the adoption order, or
- > the other parent's (ie not the partner of the step-parent) or guardian's consent should be dispensed with

The applicant must give the appropriate local authority written notice of their intention to apply to adopt the child at least three months and no more than two years prior to the application.

The rules governing the procedure on an adoption application are contained in FPR 2010, SI 2010/2955, Pt 14 and the supporting practice directions.

The court's paramount consideration in step-parent adoptions will be the same as in any adoption, namely the child's welfare throughout their life. The court must also have regard to the checklist at ACA 2002, s 1(4), which is not exhaustive.

See Practice Note: [Adoption by step-parents](#). The following Precedent letter may be sent by practitioners to their clients: [Adoption by step-parents—client guide](#).

Child arrangements orders

Since 22 April 2014, when section 12 of the Children and Families Act 2014 (CFA 2014) came into effect, the terms 'residence' and 'contact' have no longer been used in private law children proceedings.

CFA 2014, s 12 amended ChA 1989, s 8(1) by removing the definitions of 'contact order' and 'residence order' and inserted instead a new single order called a child arrangements order (CAO).

A CAO means an order relating to:

- > whom a child is to live, spend time or otherwise have contact with, and
- > when a child is to live, spend time or otherwise have contact with any person

See Practice Note: [Child arrangements orders](#).

Child Arrangements Programme—the procedure for section 8 applications

The procedure for an application for a section 8 order is set out in FPR 2010, SI 2010/2955, Pt 12 and the supporting practice direction, FPR 2010, PD 12B, called the Child Arrangements Programme (CAP).

Note that before an application is made to court for a CAO, the applicant must attend a MIAM unless one of the exemptions applies.

See Practice Note: [Non-court dispute resolution—mediation information and assessment meetings \(MIAMs\)](#).

The applicant must file a Form C100 in which they will be required to confirm attendance at a MIAM or specify that an exemption applies. Where there is an allegation of abuse, violence or harm, they must also file a Form C1A. FPR 2010 prescribe who will be a respondent. A first hearing dispute resolution appointment will be listed by the court in accordance with the CAP.

See Practice Note: [Child Arrangements Programme—the procedure for section 8 applications](#).

Child arrangements orders—residence

A CAO may regulate with whom a child is to live and when a child is to live with any person (similar to a residence order).

A CAO does not determine the location in which the child is to live. The order may be made in favour of more than one person and arrangements as to where the child is to live may be shared. When making a CAO, the child's welfare is the court's paramount consideration. The court must take into account the statutory checklist and any other factors that it considers relevant. It must also consider whether it would be better for the child for an order to be made rather than making no order at all.

See Practice Note: [Child arrangements orders—residence](#).

Mediation information and assessment meetings

With effect from 22 April 2014 a potential applicant in relevant family proceedings must, before making their application, consider with a mediator whether the dispute may be capable of being resolved through mediation by way of a MIAM, unless a MIAM exemption or a mediator's exemption applies.

See Practice Note: [Non-court dispute resolution—mediation information and assessment meetings \(MIAMs\)](#).

Evidence in private law children proceedings

Under FPR 2010, SI 2010/2955, Pt 22 the court is given wide powers to control the way in which evidence is given. It may give directions as to:

- > the issues on which it requires evidence
- > the nature of the evidence that it requires to decide those issues, and
- > the way in which the evidence is placed before it

It may exclude evidence that would otherwise be admissible.

See Practice Note: [Evidence in private law children proceedings](#).

Expert evidence in private children proceedings

The provision and control of expert evidence in children proceedings is now governed by CFA 2014, s 13, FPR 2010, SI 2010/2955, Pt 25 and the supporting practice directions and the Civil Evidence Act 1972.

An expert is defined in FPR 2010 as a person who provides expert evidence for use in proceedings. The chief characteristic of such a person is the ability to give evidence as to facts and opinion on the issues in the case.

With effect from 1 October 2014 FPR 2010, PD 25B was amended to introduce new national standards (annexed to the practice direction) with which expert witnesses must comply, and which were designed to raise the quality of expert witness evidence in children cases.

In children proceedings (pursuant to CFA 2014, s 13(1), (3)), the court's permission is required before an expert can be instructed or before a child can be medically or psychiatrically examined or otherwise assessed for the purposes of the provision of expert evidence in the proceedings. Assessment will include an observation of contact with a child and a direction from the court will be required to permit this.

Any evidence resulting from the instruction of an expert or the assessment of a child without the court's permission will be inadmissible unless it rules otherwise.

An application for permission should be made under the FPR 2010, SI 2010/2955, Pt 18 procedure on Form C2.

See Practice Note: [FPR 2010, Part 18 applications—procedure](#).

The court is under a duty to restrict expert evidence to that which, in its opinion, is necessary to assist it to resolve the proceedings justly.

Guidance is provided in FPR 2010, PD 25C in relation to instructing a single joint expert (SJE) and asking questions in writing to an expert instructed by another party or to an SJE (FPR 2010, SI 2010/2955, 25.20).

See Practice Note: [Expert evidence in private children proceedings](#).

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